STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR HOLLINGSWORTH CAYCE,

Defendant-Appellant.

UNPUBLISHED
September 11, 1998

No. 200538
Oakland Circuit Court
LC No. 96-145417 FC

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), two counts of first-degree felony murder (arson), MCL 750.316(1)(b); MSA 28.548(1)(b), and two counts of first-degree felony murder (larceny), MCL 750.316(1)(b); MSA 28.548(1)(b). He subsequently pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to concurrent terms of life without parole for each murder conviction.[1] Defendant appeals as of right. We affirm, but remand for amendment of the judgment of sentence.

Defendant first argues that there was insufficient evidence to support his convictions. When reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a reasonable jury could find that the elements of the crime were proven beyond a reasonable doubt. *People v Graves*, 224 Mich App 676, 677; 569 NW2d 911 (1997).

To prove first-degree premeditated murder, the prosecution must establish that the defendant intentionally killed the victim and that the killing was premeditated and deliberate. *Id*. at 678. Premeditation and deliberation require sufficient time to allow the defendant to take a "second look," and may be inferred from all the facts and circumstances surrounding the incident. *Id*. In addition, a conviction for first-degree felony murder requires proof that the defendant (1) killed a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, (3) while committing,

attempting to commit or assisting in the commission of any of the felonies enumerated in the statute. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995). Arson "is the malicious and voluntary or wilful burning of a dwelling house of another." *People v Reeves*, 448 Mich 1, 3-4; 528 NW2d 160 (1995). Larceny is the taking and carrying away of property of another, done with felonious intent and without the owner's consent. *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996).

Defendant argues that the circumstantial evidence presented at trial was insufficient to establish his identity as the perpetrator of the crimes. We disagree. Circumstantial evidence and reasonable inferences drawn therefrom may constitute satisfactory proof of the elements of an offense. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). The identity of the defendant as the person who committed a crime may be established beyond a reasonable doubt by segments of circumstantial proof in combination, even if each element standing alone might not be sufficient. *People v Bottany*, 43 Mich App 375, 377-378; 204 NW2d 230 (1972).

In this case, three witnesses testified that defendant told them that he set the Bovair home on fire, killed Melissa Bovair, his ex-girlfriend's best friend, by forcing her to breathe carbon monoxide from a running car's exhaust pipe, killed her mother, Louise Bovair, by dousing her body with gasoline and igniting it after first attempting to poison her with carbon monoxide, and that he took items from the Bovair home. Witness Huntington testified that on the day of the murders, defendant called and asked to borrow a gas can. A few days later, defendant told him that he was involved in the fire and that he killed his ex-girlfriend's best friend. Witness Harrison also testified that defendant told her that he had set the Bovair house on fire, poisoned Melissa and Louise with carbon monoxide, and dumped kerosene on Louise Bovair because she regained consciousness. Defendant also told Harrison that he wanted to get revenge against his ex-girlfriend for breaking up with him by killing his ex-girlfriend's best friend. Further, witness Ratliff stated that on the day of the incident, he and defendant stopped at a house where they picked up a gas can and, later, dropped defendant off in the subdivision where the Bovairs lived. Later that evening, defendant arrived at Ratliff's house and described in great detail the manner in which he started the fire and killed the victims. At that time, defendant showed him a compact disc player that he had taken from the Bovair home.

Defendant's version of the events as described to these witnesses was corroborated by the physical evidence at trial which indicated that the fire at the Bovair house had been deliberately set, that an accelerant had been spread throughout the house, and the victims' bedrooms, and had been poured on Louise's body where the fire originated. In addition, the autopsies of the bodies showed that the level of carbon monoxide in Melissa's body was lethal and could have resulted from her being forced to breathe fumes from an exhaust pipe, and that the level in Louise's body would have left her weak and disoriented, but would not have killed her. The autopsy also established that the burns on Louise's body indicated that an accelerant had been used. Finally, during a search of defendant's home, the police found a compact disc player and a satchel containing jewelry, both of which belonged to the Bovairs.

Although defendant points to his mother's testimony as establishing that another person committed the crimes, and attempts to minimize the statements he made to the witnesses by claiming that

he was only joking when he made them, we will not interfere with credibility determinations made by the trier of fact. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). Viewing the evidence presented in this case in the light most favorable to the prosecution, we find that there was sufficient circumstantial evidence to permit a reasonable jury to conclude that defendant was the perpetrator beyond a reasonable doubt.

Next, defendant argues that his convictions and sentences for both first-degree premeditated murder and two felony murders arising from the death of the same person violated his constitutional right to be protected against double jeopardy. We agree.

In *People v Bigelow*, ___ Mich App ___; ___ NW2d ___ (Docket No. 188900, issued 4/10/98), a special conflict panel of this Court resolved the double jeopardy issue presented in this case and held:

> the appropriate remedy to protect defendant's rights against double jeopardy is to modify defendant's judgment of conviction and sentence to specify that defendant's conviction is for one count and one sentence of first-degree murder supported by two theories: premeditated murder and felony murder. [Slip op at 1, quoting *People v Bigelow*, 225 Mich App 806; 571 NW2d 520 (1997).]

In this case, defendant was convicted of one count of first-degree premeditated murder, one count of first-degree felony murder (arson) and one count of felony murder (larceny) for each killing. The trial court sentenced defendant to concurrent terms of life without parole for each murder conviction. Accordingly, we remand to the trial court to amend the judgment of conviction and sentence to specify that defendant's convictions are for one count and one sentence of first-degree murder for each killing supported by three theories: premeditated murder, felony murder (arson), and felony murder (larceny).[2]

Affirmed and remanded for amendment of the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Roman S. Gribbs
/s/ Hilda R. Gage

[1] Defendant was also charged, convicted, and sentenced for arson-burning a dwelling house, MCL 750.72; MSA 28.267. The trial court vacated the arson conviction and sentence.

[2] The trial court at the sentencing hearing specified that defendant's convictions were for one count of first-degree murder for each killing based on alternative theories of premeditated and felony murder. Nevertheless, this was not reflected in the judgment of sentence and accordingly, we remand for this ministerial correction.